

BOARD OF ETHICS FOR ELECTED OFFICIALS  
in its capacity as the  
SUPERVISORY COMMITTEE ON CAMPAIGN FINANCE DISCLOSURE

DATED: February 21, 1991

OPINION NO. 90-134

RE: Contribution Limits and Changing Office Levels

The Board of Ethics for Elected Officials, acting as the Supervisory Committee on Campaign Finance Disclosure, (the "Board") is authorized by R.S. 18:1511.2 B to render advisory opinions concerning the general application of provisions of the Campaign Finance Disclosure Act (the "CFDA"). The Board has received one formal request for an opinion and numerous informal inquiries concerning the application of contribution limits when a candidate changes the office he is seeking after fund-raising efforts have commenced. This opinion is therefore rendered to address the application of the contribution limits in various scenarios.

I. The Law

Contribution limits were established in the CFDA by virtue of Act 994 of the 1988 Regular Session of the Louisiana Legislature, effective January 1, 1991. The contribution limits are \$5,000 for "major office" candidates, \$2,500 for "district office" candidates and \$1,000 for "any other" office candidates.\* The limits apply on a per election basis, with the

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\* The various exceptions to this general rule can be summarized as follows: Limits do not apply to a candidate's use of his personal funds nor do they apply to contributions to candidates made by recognized political parties or their committees. Political committees with over 250 members who contributed at

primary and general elections constituting two separate elections. Contributions, loans, and endorsements or guarantees on loans from one person must be aggregated together in determining whether the limits have been violated. Further, contributions from political committees are subject to aggregate limits for the primary and general elections combined. R.S. 18:1505.2 H.

The contribution limit section of the CFDA provides in pertinent part that:

No person shall make a loan, transfer of funds, or contribution, . . . , in the aggregate for all reporting periods for an election, . . . , in excess of the contribution limits established . . . R.S. 18:1505.2 H(3)(b).

No candidate . . . shall accept from the same contributor a loan, transfer of funds, or contribution, . . . , in the aggregate for all reporting periods of an election, . . . in excess of the contribution limits established . . . R.S. 18:1505.2 H(3)(c).

The definition of "candidate" in the CFDA provides in pertinent part that:

"Candidate" means a person who seeks nomination or election to public office . . . . An individual shall be deemed to seek nomination or election to such office if he has:

(i) Since prior participation in an election, if any, received and accepted a contribution or made an expenditure, . . . with a view to influencing his nomination or election to office whether or not the specific public office for which he will be a candidate is known at the time the contribution is received or the expenditure is made, . . . R.S. 18:1483(3).

least \$50 to the committee during the preceding calendar year may contribute up to double the normal limits. The limits do not apply to loans obtained from lending institutions during the ordinary course of business at the usual and customary rates of interest when repayment is assured.

The Election Code prohibits a person from being a candidate for more than one office in an election. R.S. 18:453.

## II. The Facts

Given the provisions of law cited above, the Board now considers the following hypothetical situations:

"A" is an incumbent member of the State House of Representatives, last elected in 1987, and has collected contributions and made expenditures anticipating his re-election campaign in October, 1991. "A" then becomes a candidate in a special election to fill a vacancy in the State Senate. May "A" set up a new account for his Senate campaign, leaving any previously collected contributions in his re-election account? Do the contributions previously collected by "A" from political committees count toward his limits in his race for the Senate?

The Board is of the opinion that "A" should consider any funds collected from his last election as applying toward his race for the Senate. "A" should therefore use his existing campaign account in the Senate race and should not maintain two accounts. "A" cannot participate in two future elections simultaneously. Any funds collected since January 1, 1989, the effective date of the limits, would apply to his contribution limits in the Senate race.

### 2.

"B" is an incumbent member of the Legislature, a "district office," and is considering running for a statewide office, a "major office." "B" therefore collects and spends campaign contributions using the \$5,000 contribution limit that applies to major offices. However, "B" then qualifies for re-election to the Legislature. At the time of qualification "B" has funds on hand which were collected using the \$5,000 contribution limit.

"B" became a candidate when he accepted a contribution or made an expenditure since his prior participation in an

election. "B" was not required to declare the specific office he was seeking when he became a candidate, but, he was required to determine the level of office he intended to seek for purposes of the contribution limits. If "B" declared his intentions to run for a statewide office, a "major office," and conducted a campaign pursuant to that declaration, his collection of contributions using the \$5,000 limit was appropriate.

However, once the qualifying period commenced and "B" qualified for re-election to the Legislature, rather than a statewide office, "B" became a district office candidate, subject to the \$2,500 contribution limit. The \$2,500 limit applies retrospectively to "B."

Any funds collected and expended by "B" using the \$5,000 limit are not considered excessive, even though he qualified for a district office, if those funds were expended by him in a manner indicative of a statewide campaign. The determination of whether funds were expended in a manner indicative of a statewide campaign depends on the factual circumstances. Factors to be considered when expenditures are made by the candidate for advertising include, but are not limited to, the nature of the advertising, its geographic distribution, and whether it specifically promoted the candidate for a particular statewide office. Other types of expenditures must be considered using similar factors.

"B" must now dispose of any funds he collected in excess of the now applicable \$2,500 limit that have not yet been expended. In determining whether funds on hand are excessive, the Board concludes that a "first in, first out" method of accounting should be used. Therefore, "B" is deemed to have expended funds

as they were collected. Those funds still on hand will be the latest funds collected. If any of those contributions are excessive of the \$2,500 limit, the excessive amount must be returned to the contributor.

### III. Conclusion

The Board's opinion is based on its reading of the applicable statutory provisions and its desire to promote the spirit and purpose of the contribution limits enacted during the 1988 session of the Louisiana Legislature. The broad opinions expressed in light of the hypothetical situations presented should be used as a guide by candidates. More specific questions will be addressed by the Board on a case-by-case basis upon written request for an opinion by any candidate.

s/Robert L. Roland  
Robert L. Roland, Chairman

s/Harry McCall  
Harry McCall, Vice-Chairman

s/Carlos G. Spaht  
Carlos G. Spaht

s/Edwards Barham  
Edwards Barham

s/John Tassin  
John Tassin